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8 UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

9 WASHINGTON TOXICS COALITION,)
10 NORTHWEST COALITION FOR)
ALTERNATIVES TO PESTICIDES,)
11 DEFENDERS OF WILDLIFE, NATURAL)
RESOURCES DEFENSE COUNCIL,)
12 CENTER FOR BIOLOGICAL)
DIVERSITY, PACIFIC COAST)
13 FEDERATION OF FISHERMAN'S)
ASSOCIATIONS, INSTITUTE FOR)
14 FISHERIES RESOURCES, and HELPING)
OUR PENINSULA'S ENVIRONMENT,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF)
18 INTERIOR, UNITED STATES FISH AND)
WILDLIFE SERVICE, UNITED STATES)
19 DEPARTMENT OF COMMERCE, and)
20 NATIONAL MARINE FISHERIES)
SERVICE,)

21 Defendants.)
22

Case No. 04-cv-1998

**FEDERAL DEFENDANTS'
ANSWER TO PLAINTIFFS'
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

23 COME NOW the Federal Defendants, United States Department of the Interior, United
24 States Fish and Wildlife Service, United States Department of Commerce, and National Marine
25 Fisheries Service and, through counsel, in response to Plaintiffs' Complaint for Declaratory and
26 Injunctive Relief, hereby respond, state, and aver as follows:
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1. Federal Defendants admit the allegations set out in: ¶ 12; ¶ 14; the first sentence of ¶ 20; the third sentence of ¶ 38; the sixth sentence of ¶ 46; the first and second sentences of ¶ 47; the second sentence of ¶ 86; the first and second sentences of ¶ 91; the first sentence of ¶ 92; and the sixth sentence of ¶ 100.

2. Federal Defendants deny the allegations set out in: the third sentence of ¶ 11; the second sentence of ¶ 16; the third sentence of ¶ 91; the first sentence of ¶ 96; the third, fourth, fifth, and seventh sentences of ¶ 100; ¶ 101; the fifth sentence of ¶ 105; ¶ 111; the second and third sentences of ¶ 116; the third sentence of ¶ 118; the fourth sentence of ¶ 119; the third sentence of ¶ 121; ¶ 122; ¶ 128; the fifth sentence of ¶ 133; ¶ 134; ¶ 141; the sixth sentence of ¶ 144; the fifth sentence of ¶ 149; and ¶ 151.

3. The allegations set out in: the third sentence of ¶ 1; the second sentence of ¶ 15; the first and second sentences of ¶ 29; the first sentence of ¶ 32; the second and third sentences of ¶ 35; the first sentence of ¶ 49; the second sentence of ¶ 96; the third sentence of ¶ 97; the first sentence of ¶ 99; the second sentence of ¶ 103; the second and fifth sentences of ¶ 104; the first sentence of ¶ 106; the first, third, and fourth sentences of ¶ 110; the fifth sentence of ¶ 113; the first sentence of ¶ 115; the third sentence of ¶ 117; the first sentence of ¶ 120; the first sentence of ¶ 121; ¶ 123; ¶ 126; the third and fourth sentences of ¶ 132; the second and sixth sentences of ¶ 133; the second sentence of ¶ 137; and the second and third sentences of ¶ 146 consist of conclusions of law that require no response. To the extent that a response is required, Federal Defendants deny those allegations.

4. Federal Defendants lack sufficient information or knowledge to form an opinion as to the truth of the allegations set out in: ¶ 2; ¶ 3; the first, second, fifth, and sixth sentences of ¶ 4; the first, second, third, and fourth sentences of ¶ 5; the first, second, fifth, and sixth sentences of ¶ 6; ¶¶ 7 through 10; and the first and second sentences of ¶ 11. Federal Defendants deny these allegations on that basis.

5. The allegations set out in: the first sentence of ¶ 1; the first sentence of ¶ 15; the third sentence of ¶ 16; the second, third, and fourth sentences of ¶ 44; the first sentence of ¶ 46;

1 and the second sentence of ¶ 49 consist of Plaintiffs' characterization of the nature of this case or
2 other cases and require no response. To the extent that a response is required, Federal
3 Defendants deny these allegations.

4 6. The allegations set out in: the third sentence of ¶ 33; the seventh sentence of ¶ 34;
5 the first sentence of ¶ 36; the first, second, and third sentences of ¶ 41; the first, second, third,
6 and fourth sentences of ¶ 42; the first, second, and third sentences of ¶ 43; the third sentence of ¶
7 47; the first and third sentences of ¶ 50; the second sentence of ¶ 54; the second and eighth
8 sentences of ¶ 100; the fourth sentence of ¶ 105; the first sentence of ¶ 108; the second sentence
9 of ¶ 110; the first, second, third, and fourth sentences of ¶ 113; the third sentence of ¶ 114; and
10 the first, second, and third sentences of ¶ 149 are too vague and ambiguous to enable Federal
11 Defendants to admit or deny them, and Federal Defendants deny the allegations on that basis.

12 7. The allegations set out in: the second and fourth sentences of ¶ 1; the first
13 sentence of ¶ 16; ¶¶ 17 through 19; the second sentence of ¶ 20; ¶¶ 21 through 23; ¶¶ 25 through
14 28; the third sentence of ¶ 29; ¶ 30; ¶ 31; the second, third, fourth, and fifth sentences of ¶ 32;
15 the first and second sentences of ¶ 33; the first, second, third, fourth, fifth, and sixth sentences of
16 ¶ 34; the first sentence of ¶ 35; the second sentence of ¶ 36; ¶ 37; the first and second sentences
17 of ¶ 38; the first, second, and third sentences of ¶ 39; ¶ 40; the fourth sentence of ¶ 41; the fifth
18 sentence of ¶ 42; the fourth sentence of ¶ 43; ¶ 45; the second, third, fourth, and fifth sentences
19 of ¶ 46; the fourth, fifth, and sixth sentences of ¶ 47; ¶ 48; the second and third sentences of ¶
20 51; ¶ 52; ¶ 53; ¶¶ 55 through 58; ¶ 60; the second sentence of ¶ 61; ¶¶ 62 through 64; ¶ 65; ¶¶ 66
21 through 71; the second and third sentences of ¶ 72; ¶¶ 73 through 85; the first, third, and fourth
22 sentences of ¶ 86; ¶¶ 87 through 90; the fourth sentence of ¶ 91; the second and third sentences
23 of ¶ 92; ¶ 93; ¶ 94; ¶ 95; the first and second sentences of ¶ 97; ¶ 98; the second and third
24 sentences of ¶ 99; the first sentence of ¶ 100; ¶ 102; the first, third, and fourth sentences of ¶
25 103; the first, third, and fourth sentences of ¶ 104; the first, second, and third sentences of ¶ 105;
26 the second sentences of ¶ 106; ¶ 107; the second sentence of ¶ 108; ¶ 109; ¶ 112; the first,
27 second, and fourth sentences of ¶ 114; the second sentence of ¶ 115; the first sentence of ¶ 116;

1 the first and second sentences of ¶ 117; the first and second sentences of ¶ 118; the first, second,
2 and third sentences of ¶ 119; the second sentence of ¶ 120; the second sentence of ¶ 121; ¶ 124; ¶
3 125; ¶ 127; ¶¶ 129 through 131; the first and second sentences of ¶ 132; the first, third, and
4 fourth sentences of ¶ 133; ¶ 135; ¶ 136; the first sentence of ¶ 137; ¶¶ 138 through 140; ¶ 142; ¶
5 143; the first, second, third, fourth, and fifth sentences of ¶ 144; ¶ 145; the first and fourth
6 sentences of ¶ 146; ¶ 147; ¶ 148; the fourth sentence of ¶ 149; and ¶ 150 purport to characterize
7 various documents, statutes, and regulations, including, but not limited to, the Endangered
8 Species Act and its implementing regulations, the Federal Insecticide, Fungicide, and
9 Rodenticide Act and its implementing regulations, the Joint Counterpart Endangered Species Act
10 Section 7 Consultation Regulations, the alternative consultation agreement, the United States
11 Environmental Protection Agency's "Overview of the Ecological Risk Assessment Process in
12 the Office of Pesticide Programs," and various correspondence between Federal agencies. The
13 documents, statutes, and regulations cited by Plaintiffs speak for themselves and provide the best
14 evidence of their contents. Federal Defendants deny these allegations to the extent that they are
15 inconsistent with the cited documents, statutes, or regulations.

16 8. In response to the allegations set out in the third and fourth sentences of ¶ 4,
17 Federal Defendants admit that the lawsuits cited in these sentences were filed. The remaining
18 allegations in these sentences consist of Plaintiffs' characterizations of the nature of these cases,
19 which require no response. To the extent that a response is required, Federal Defendants deny
20 these allegations.

21 9. In response to the allegations set out in the fifth sentence of ¶ 5, Federal
22 Defendants admit that Plaintiff Natural Resources Defense Council brought the lawsuit
23 identified in this sentence. The remaining allegations in this sentence consist of Plaintiffs'
24 characterization of the nature of that case, which require no response. To the extent that a
25 response is required, Federal Defendants deny these allegations.

26 10. In response to the allegations set out in the third and fourth sentences of ¶ 6,
27 Federal Defendants admit that the lawsuits cited in these sentences were filed. The remaining
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1 allegations in these sentences consist of Plaintiffs' characterizations of the nature of these cases,
2 which require no response. To the extent that a response is required, Federal Defendants deny
3 these allegations.

4 11. Federal Defendants admit the allegations set out in ¶ 13 and further aver that the
5 National Marine Fisheries Service ("NMFS") shares jurisdiction with the United States Fish and
6 Wildlife Service ("FWS") for certain anadromous species.

7 12. In response to the allegations set out in ¶ 24, Federal Defendants admit that
8 federal agencies generally do not engage in consultation under the Endangered Species Act
9 ("ESA") where the action agency determines that an action will have "no effect" on listed
10 species or critical habitat. Federal Defendants further aver that federal agencies are not
11 precluded from consulting with NMFS or FWS regarding such a "no effect" determination. The
12 remaining allegations in ¶ 24 are too vague and ambiguous to enable Federal Defendants to
13 admit or deny them, and Federal Defendants deny the allegations on that basis.

14 13. The allegations set out in fourth sentence of ¶ 35 are too vague and ambiguous to
15 enable Federal Defendants to admit or deny them, and Federal Defendants deny the allegations
16 on that basis. Federal Defendants further aver that the United States Environmental Protection
17 Agency ("EPA") has made "may affect" determinations for certain pesticides.

18 14. In response to the allegations set out in the fourth sentence of ¶ 39, Federal
19 Defendants admit that EPA has not finalized the referenced program. The remaining allegations
20 in ¶ 39 purport to characterize a Federal Register notice, which speaks for itself and is the best
21 evidence of its contents. Federal Defendants deny these allegations to the extent that they are
22 inconsistent with that notice.

23 15. In response to the allegations set out in the first sentence of ¶ 44, Federal
24 Defendants admit that the lawsuit cited in this sentence was filed. The remaining allegations in
25 this sentence consist of Plaintiffs' characterization of the nature of that case, which require no
26 response. To the extent that a response is required, Federal Defendants deny these allegations.

1 16. In response to the allegations set out in the second and fourth sentences of ¶ 50,
2 Federal Defendants admit that certain personnel of the Federal Defendants have met with
3 representatives of various non-governmental organizations since 2002 to discuss developing
4 consultation counterpart regulations for pesticides. Federal Defendants lack sufficient
5 information or knowledge to form an opinion as to the truth of the allegations in these sentences
6 that relate to federal agencies that are not defendants in this case and, on that basis, deny those
7 allegations. The remaining allegations in these sentences are too vague and ambiguous to enable
8 Federal Defendants to admit or deny them, and Federal Defendants deny the allegations on that
9 basis.

10 17. In response to the allegations set out in the first sentence of ¶ 54, Federal
11 Defendants admit that NMFS and FWS evaluated EPA's ecological risk assessment process, but
12 deny that this evaluation was "part of the rulemaking."

13 18. In response to the allegations set out in ¶ 59, Federal Defendants admit that the
14 cited documents were issued by NMFS or FWS. The remaining allegations in ¶ 59 purport to
15 characterize those documents, which speak for themselves and are the best evidence of their
16 contents. Federal Defendants deny those allegations to the extent that they are inconsistent with
17 those documents.

18 19. In response to the allegations set out in the first, third, and fourth sentences of ¶
19 61, Federal Defendants admit that EPA, NMFS, and FWS released the cited documents. The
20 remaining allegations in ¶ 61 purport to characterize those documents, which speak for
21 themselves and are the best evidence of their contents. Federal Defendants deny those
22 allegations to the extent that they are inconsistent with those documents.

23 20. In response to the allegations set out in the first sentence of ¶ 51, Federal
24 Defendants admit that they published the cited advance notice of proposed rulemaking. The
25 remaining allegations in this sentence purport to characterize that notice, which speaks for itself
26 and is the best evidence of its contents. Federal Defendants deny those allegations to the extent
27 that they are inconsistent with that notice.

1 21. In response to the allegations set out in the first sentence of ¶ 72, Federal
2 Defendants admit that NMFS and FWS proposed counterpart regulations in January 2004. The
3 remaining allegations in this sentence purport to characterize those proposed regulations, which
4 speak for themselves and are the best evidence of their contents. Federal Defendants deny those
5 allegations to the extent that they are inconsistent with the proposed regulations.

6 **PRAYER FOR RELIEF**

7 The remainder of Plaintiffs' Complaint for Declaratory and Injunctive Relief consists of
8 Plaintiffs' Prayer for Relief, to which no response is required. To the extent a response may be
9 deemed to be required, Federal Defendants deny that Plaintiffs are entitled to the relief requested
10 in their Complaint or to any relief whatsoever.

11 **GENERAL DENIAL**

12 Federal Defendants deny each and every allegation in the Complaint that has not
13 otherwise been expressly admitted, qualified, or denied.

14 **DEFENSES**

15 **FIRST DEFENSE**

16 Plaintiffs lack standing to sue.

17 WHEREFORE, Federal Defendants deny that Plaintiffs are entitled to the relief prayed
18 for, or any relief whatsoever, and request that this action be dismissed with prejudice, that
19 judgment be entered for the Federal Defendants, that the Court grant Federal Defendants their
20 costs of suit, and that the Court order such other and further relief as the Court may allow.

21 Dated: November 22, 2004

22 Respectfully submitted,

23 THOMAS L. SANSONETTI
24 Assistant Attorney General
25 JEAN E. WILLIAMS, Section Chief
26 SETH M. BARSKY, Assistant Chief

27 s/ James A. Maysonett
28 _____
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30 United States Department of Justice
31 Environment & Natural Resources Division

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing Patti A. Goldman, counsel for Plaintiffs.

s/ James A. Maysonett
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